

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL E. STICKNEY
and WILLIAM J. KEMP, JR.

Appeal No. 1997-4352
Application 08/422,689¹

ON BRIEF

Before THOMAS, KRASS, and BARRETT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed April 14, 1995. According to appellants, this application is a continuation of Application 07/926,014, filed August 6, 1992, now abandoned.

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This is a decision on appeal from the final rejection of claims 15 through 34 and 36, all the claims pending in the application.

The invention is directed to a computer-based interrogation recording tool for rapidly converting verbal descriptions of objects and events into graphical displays by recording, arranging and manipulating graphical objects stored in a three-dimensional geometric database in response to an operator's input based on a witness' statements to the operator.

Representative independent claim 15 is reproduced as follows:

15. A method for creating a visual display of a set of objects in response to a person's verbal statements describing actual objects and events occurring at different times, said method comprising:

receiving by an operator a plurality of said verbal statements containing descriptions of said objects at different times;

said operator entering information derived from said verbal statements into an interrogation recording tool, said statements being recorded and represented by the interrogation recording tool as graphical representations of the objects and events;

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determining a plurality of locations, orientations, and forms of said objects in a temporal sequence corresponding to said description of said objects for at least two different times;

generating a plurality of the graphical representations of said objects in said temporal sequence; and

displaying said plurality of the graphical representations of said objects to illustrate changes between different time periods, wherein the displayed graphical representations allow the person to review the graphical representations in real time immediately after being recorded so as to allow the operator to make changes and modifications to the graphical representations based on subsequent verbal statements made by the person.

The examiner relies on the following references:

Simone, "Autodesk Inc.: Autodesk Animator Pro and Autodesk Multimedia Explorer," PC Magazine, vol. 11, no. 14, p. 452, August 1992.

Kantor, "Computing in the Courtroom," PC Magazine, vol. 12, no. 4, p. 32, February 23, 1993.

Claims 15 through 34 and 36 stand rejected under 35
U.S.C.

§ 103 as unpatentable over Kantor in view of Simone.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

At the outset, we note that while the effective filing date of the instant application is August 6, 1992, based on

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the filing date of parent application Serial No. 07/926,014, the references relied on by the examiner bear publication dates of February 23, 1993 (Kantor) and August, 1992 (Simone). Thus, these references, by themselves, would not be viable references under 35 U.S.C.

§ 103, through 35 U.S.C. 102(a). However, we note that both references are directed to the "Autodesk Animator" produced by Autodesk, Inc. and there is evidence, within the disclosure of Kantor, that this system was available to the public no later than January 28, 1992. The "Autodesk Animator" system is considered prior art based upon the Kantor disclosure which is not itself a prior art publication but indicates that the "Autodesk Animator" was available, in this country, at least seven months prior to the effective filing date of the instant application. See In re Epstein, 32 F.3d 1559, 1567-1568, 31 USPQ2d 1817, 1822-1823 (Fed. Cir. 1994). Accordingly, we will consider the disclosures of Kantor and Simone as they relate to the capabilities of the "Autodesk Animator" system and that system's relevance to the instant claimed subject matter.²

² Appellants' brief does not indicate any objection to the examiner's application of Kantor and Simone with regard to the publication dates of the references.

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We have considered the merits of the examiner's rejection and we will reverse the rejection of claims 15 through 34 and 36 under 35 U.S.C. § 103 because, based on the evidence provided by Kantor and Simone, it is our view that the examiner has not established a prima facie case of obviousness.

The examiner relies on Simone to provide the details of the "Autodesk Animator" system which Kantor indicates had been used in a court proceeding environment prior to the effective filing date of the instant application. In particular, the examiner uses Simone's teaching of a "pathing" animation as a teaching of "determining a plurality of locations, orientations, and forms of said objects in a temporal sequence corresponding to said description of said objects for at least two different times," as recited specifically in independent claim 15 but also required, in various forms, by independent claims 17 and 27. The examiner also contends that Simone's disclosure of a "clocked path" suggests the orientation of objects in a temporal sequence corresponding to a description of the objects for at least two different times. The examiner still further points out that Simone's disclosure of a

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"pathing" technique, which includes information pertaining to direction instructions, spins, size changes, closed polygons, and variable speeds, is suggestive of claim 17's "encoding the dynamics of geometric object relationships as textual algorithms, and using these textual algorithms to modify objects and their geometric relationships in a geometry database" [quoted from the examiner's description at page 5 of the answer].

It does appear that the "Autodesk Animator" described by Simone may, possibly, have many, if not all, of the capabilities recited in the instant claims and we are troubled by the failure of the examiner to employ a disclosure of the "Autodesk Animator," itself, as by way, for example, of an operating manual describing the actual system, rather than a publication merely referring to the "Autodesk Animator" system. Nevertheless, the examiner offers only Kantor and Simone as evidence of obviousness of the instant claimed subject matter. We find Simone's overly general description of some of the features of "Autodesk Animator" to fall short of providing for the specifically claimed features, as pointed out by appellants at pages 11-16 of the brief. While Simone

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does indicate generalities as to capabilities, such as "true shape interpolation" (tweening), "Optics, Tween, Inks, Tools, Frames, Anim cel, Palette, and Titling," "pathing" which "can include spins, size changes, closed polygons, and variable speeds," a "clocked path" which "not only notes the direction of your mouse movement but the speed as well," using "both the shape and the timing to render the effect--in the process creating naturalistic movement" and creating by "using all of the functions simultaneously," we find that the examiner has failed to persuasively relate these various features disclosed by Simone as being part of the "Autodesk Animator" to the instant claimed steps and elements. While many of the features relied on by the examiner may, indeed, relate, somewhat, to claimed elements and steps, we find the examiner's reasoning to be too speculative to sustain a rejection under 35 U.S.C. 103 based thereon.

A rejection under 35 U.S.C. § 103 may not be based on mere speculation. If the examiner intends to reject the instant claims based on the "Autodesk Animator," the examiner should obtain the best evidence, in this case the best evidence being some document, such as the operator's manual,

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specifically describing the features of "Autodesk Animator."
The very general disclosures of Kantor and Simone with regard
to the "Autodesk Animator" is clearly not sufficient to
sustain a rejection of the instant claims under 35 U.S.C. §
103.

The examiner's decision rejecting claims 15 through 34
and 36 under 35 U.S.C. § 103 is reversed.

REVERSED

	James D. Thomas)	
	Administrative Patent Judge)	
)	
)	
)	
	Errol A. Krass)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
	Lee E. Barrett)	
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